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E-filed on: August 16, 2011

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

THE CHURCH AT SOUTH LAS VEGAS,

Debtor.

Case No. BK-S-11-20839-LBR
Chapter 11

**SUPPLEMENT TO OPPOSITION TO
MOTION FOR ORDER DETERMINING
THAT DESIGNATED CASH IS NOT
PROPERTY OF THE ESTATE
PURSUANT TO 11 U.S.C. § 541 AND
REQUEST FOR EVIDENTIARY
HEARING**

Date of Hearing: August 24, 2011
Time of Hearing: 2:00 p.m.

Judge: Hon. Linda B. Riegler

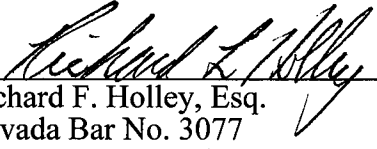
First Bank (the "Bank"), by and through its counsel, the law firm of Santoro, Driggs, Walch, Kearney, Holley & Thompson, hereby files this Supplement (the "Supplement") to the Bank's Opposition to Motion for Order Determining that Designated Cash is Not Property of the Estate Pursuant to 11 U.S.C. § 541 [Dkt. No. 45], filed August 10, 2011 (the "Motion"), in connection with the Motion for Order Determining that Designated Cash is Not Property of the Estate Pursuant to 11 U.S.C. § 541 [Dkt. No. 26], filed July 27, 2011, by The Church at South Las Vegas (the "Debtor", the "Church" or alternatively, the "Borrower"), the Debtor and Debtor-in possession in the above-captioned bankruptcy case.

This Supplement is made and based upon the following grounds and the following reasons: (1) in the Opposition, First Bank requested that to the extent the Court believes that there may be issues of fact regarding the Debtor's trust arguments, that the Court use the

1 scheduled hearing as a preliminary hearing/scheduling conference and set the matter over for an
 2 evidentiary hearing after the parties have had sufficient time to conduct discovery; and (2) the
 3 Debtor's Motion constitutes a proceeding to determine an interest in property requiring
 4 adjudication by way of an adversary proceeding pursuant to Bankruptcy Rule 7001(2),
 5 supporting First Bank's request for an evidentiary hearing to the extent the Court deems it
 6 necessary.

7 DATED this 16th day of August, 2011.

8 **SANTORO, DRIGGS, WALCH,**
 9 **KEARNEY, HOLLEY & THOMPSON**

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17 *Attorneys for First Bank*

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. LEGAL ARGUMENT**

20 Rule 7001(2) of the Federal Rules of Bankruptcy Procedure provides that an action to
 21 "determine the validity, priority, or extent of a lien or other interest in property, other than a
 22 proceeding under Rule 4003(d)" must be brought as an adversary proceeding.¹

23 The Ninth Circuit Bankruptcy Appellate Panel in *In re Downey Regional Medical*
 24 *Center-Hospital, Inc.*, 441 B.R. 120, 127 (B.A.P. 9th Cir. 2010), analyzed the issue of whether an
 25 emergency motion constituted a proceeding to determine an interest in property that required an
 26 adversary proceeding, looking to Fed. R. Bankr. P. Rule 7001(2). On appeal, the Panel held that
 27 the bankruptcy court's decision not to require an adversary proceeding is subject to a harmless

28 ¹ Rule 4003(d) of the Federal Rules of Bankruptcy Procedure governs a proceeding by the debtor to avoid a lien or other transfer of property exempt under section 522(f) of the Bankruptcy Code.

error analysis. Id. (citing Austein v. Schwartz (In re Gerwer), 898 F.2d 730, 734 (9th Cir.1990); In re Decker, 199 B.R. at 689). Under this standard, if the absence of an adversary proceeding did not cause prejudice, form should not be elevated over substance. Id. (citing Decker, 199 B.R. at 689). The Panel focused on the question of whether some procedural difference between contested matters and adversary proceedings prejudiced appellant. Id. The record before the Panel indicated that, even if viewed as erroneous, the bankruptcy court's decision resulted in no harm to the appellant.

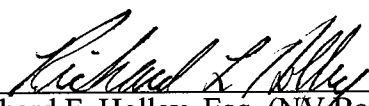
In the present case, as long as the Bankruptcy Court affords First Bank an evidentiary hearing to the extent necessary for First Bank to conduct additional discovery, then First Bank will not be prejudiced by the Debtor's procedurally improper Motion instead of an adversary proceeding as proscribed by Rule 7001(2).

CONCLUSION

Based upon the foregoing, the Bank requests that this Court deny the Motion for Order Determining that Designated Cash is Not Property of the Estate Pursuant to 11 U.S.C. § 541. To the extent the Court believes that there may be issues of fact regarding the Debtor's trust arguments, First Bank requests that the Court use the scheduled hearing as a preliminary hearing/scheduling conference and set the matter over for an evidentiary hearing after the parties have had sufficient time to conduct discovery in compliance with Rule 7001(2) of the Federal Rules of Bankruptcy Procedure.

Dated this 16th day of August, 2011.

**SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON**


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CERTIFICATE OF SERVICE

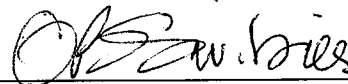
I hereby certify that I am an employee of Santoro, Driggs, Walch, Kearney, Holley & Thompson, and that on the 16th day of August, 2011, I caused to be served a true and correct copy of SUPPLEMENT TO OPPOSITION TO MOTION FOR ORDER DETERMINING THAT DESIGNATED CASH IS NOT PROPERTY OF THE ESTATE PURSUANT TO 11 U.S.C. § 541 AND REQUEST FOR EVIDENTIARY HEARING in the following manner:

☒ (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

☐ (UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached service list, at their last known mailing addresses, on the date above written.

☐ (OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

☐ (FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.



An employee of Santoro, Driggs, Walch,
Kearney, Holley & Thompson